

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**December 14, 2005**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Williams** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Azevedo, Galang, Garcia and Williams  
Absent: Mandal, Mohsin and Lalwani  
Staff: Bejines, Carrington, Faubion, Hom and Williams

**III  
PUBLIC FORUM**

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
November 9, 2005**

Chair Williams called for approval of the minutes of the Planning Commission meeting of November 9, 2005.

There were no changes to the minutes.

**Motion** to approve the November 9, 2005 minutes.

M/S: Azevedo/Garcia

AYES: 3

NOES: 0

ABSTENTIONS: 1 (Galang-absent at the meeting)

**V.  
ANNOUNCEMENTS**

Staff had no announcements this evening.

**Commissioner Garcia** announced that it was his last meeting and said it has been a real pleasure working with staff, the Commission and the community, and he will miss everyone.

Chair Williams said that Commissioner Garcia will be greatly missed and has done an outstanding job.

**VI.  
CONFLICT  
OF INTEREST**

Chair Williams asked if the Commission has any conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

Chair Williams called for approval of the agenda.

Staff had no changes to the agenda.

**Motion** to approve the agenda.

M/S: Galang/Azevedo

AYES: 4

NOES: 0

**VII.  
APPROVAL OF  
AGENDA**

**VIII.  
CONSENT CALENDAR  
Item Nos. 3, 4 and 5**

Chair Williams asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Williams pointed out that Consent Item No. 3 for Red Brick Pizza was printed incorrectly and should read as follows:

- \*3 **USE PERMIT AMENDMENT NO. UA2005-14:** A request for a Use Permit Amendment to UP2005-2 to increase indoor seating at the Red Brick Pizza from 38 seats to 44 seats, located at 131 Ranch Drive (APN: 022-53-003), zoned General Commercial (C2). Applicant: Rupen Sheth. Staff Contact: Dennis Carrington, (408) 586-3275. (PJ# 2441) (Recommendation: Approval with Conditions).

**Close the public hearing**

Chair Williams opened the public hearing on Consent Item Nos. 3 and 4.

There were no speakers from the audience.

**Motion** to close the public hearing on Consent Item No. 3 and continue Item No. 4 to January 11, 2006.

M/S: Galang/Azevedo

AYES: 4

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 3, 4 and 5.

M/S: Galang/Azevedo

AYES: 4

NOES: 0

- \*3 **USE PERMIT AMENDMENT NO. UA2005-14:** A request for a Use Permit Amendment to UP2005-2 to increase indoor seating at the Red Brick Pizza from 38 seats to 44 seats, located at 131 Ranch Drive.

- \*4 **"S" ZONE APPROVAL AMENDMENT NO. SA2005-76:** A request to amend a previously approved sign program for Abel Plaza to permit signs to be 18-inch high individual channel letters instead of the former requirement for 15-inch high fonts in cabinet signs with radius corners along with other modifications pursuant to Title XI, Chapter 30, Signs, of the Milpitas Municipal Code, located at 52-118 South Abel Street.

- \*5 **SIX-MONTH REVIEW NO. PR2005-1:** A six-month review of Use Permit No. UP2004-9 for USA O'Mei Kung Fu Academy, a martial arts studio that is situated in an existing 10,080 square foot industrial building located at 451 Los Coches Street.

**IX. PUBLIC HEARING**

**1. "S" ZONE  
APPROVAL NO. SZ2005-  
3 AND USE PERMIT NO.  
UP2005-17 (Continued  
from October 26, 2005)**

**Tom Williams, Planning and Neighborhood Services Director,** presented a request for a multifamily residential development consisting of 147 condominium units and associated site improvements, including deviations to setbacks, drive aisle width, parking space dimensions and open space requirements for the properties located at 1696 South Main Street and 75 Montague Expressway and recommended approval with conditions.

Chair Williams invited the applicant to make a presentation.

**Jim Murar, RGC Courthomes**, noted that they tracked police reports for the last three years on the project site and did not see any alarming activity. The site is 4 ½ acres surrounding the Jack-in-the-Box on Main street. There is a requirement to park 338 cars and the 147 units average 1,407 sq ft. and a density of 32 du/acre and two-car garage. There are twelve two-bedroom, homes and 135 three-bedroom homes. The goal is to attract younger families. There is a central recreation area that will have a pool and spa, recreation building, patio area with barbeque, tot lot and play field. There will be three towers facing Montague Expressway and Main Street that will announce the entrance to Midtown. He explained that part of the condition was to eliminate the balconies but will still keep it as an architectural feature. Handcraft tiles will also be used to tie the history of the site to Milpitas.

In regards to affordability, there will be 29 homes, 9 homes will be low income and 20 homes moderate income. The developer has requested of the RDA assistance to be provided to the very low-income households through the silent second homeloan program. And also that the City apply to the State for a grant under the state begin program to provide down payment assistance for moderate-income households. The program allows the city to reuse these funds for additional affordable housing after the initial homebuying.

Regarding the walls surrounding the community, **Pat Brown, RGC**, explained that there would be a five foot retained wall that would run along Montague Expressway and back down the east side of the project near the mosque. In addition to that, at each of the Paseo areas, there will be an additional six-foot sound wall. The other type of wall is a six-foot screen wall, which will happen along the northern edge of the mosque site and railroad edge and a retaining wall against the storage project. And around the Jack-in-the-Box restaurant, there will be a six-foot to eight-foot screen wall around the parking lot that backs up to the recreation facility and an eight-foot screen wall along the gas station facility.

Commissioner Garcia said that he has visited San Francisco and felt that tandem parking doesn't work very well and asked for clarification. Mr. Murar said it will work but has to be enforced. In high-density housing, it has to be included in the CC and R's that the residents use their garage for parking and the key issue is enforcement for those restrictions. The residents would be restricted from parking in the guest parking spaces.

Commissioner Galang asked why the applicant proposed an additional access for emergency vehicles on Montague Expressway. Mr. Murar explained that emergency vehicles can access other areas as well but Montague would be the first choice.

Chair Williams asked if the applicant has submitted color swatches and Mr. Williams said yes.

Chair Williams asked if anyone from RGC has an acoustical background. Mr. Murar replied that Mr. Brown has some background but they technically use other acoustical engineers for that.

Chair Williams is concerned that the project is about 27 feet near the railroad tracks and is hoping that the mosque will help as a noise barrier to the complex. Mr. Murar noted that additional acoustic studies were done as if the mosque was never built and the assumption was the mosque never existed. The recommendations were to build a soundwall between the buildings and also on the patio decks that those facades are solid so they are not open to the railroad tracks.

Chair Williams suggested that the applicant include in the general disclosures some kind of agreement with future homeowners to be aware that Jack-in-the-Box exists and there maybe some noise and odor aspects. He also referenced the general disclosures for Main Street residential attachment and suggested that Item No. 16 (adjacent commercial development) be pulled out as a separate sheet because he wants to make sure that in purchasing a new home wants to make sure there is something very visible to the homeowner.

Mr. Brown replied that in preparing Item No. 16, they were trying to be all inclusive because they were including the storage facility, gas station, Jack-in-the-Box and future Mosque and doesn't think there would be a problem that would call for a separate disclosure.

**City Attorney Kit Faubion**, mentioned that the applicant said that one of their intents was to have all of their disclosures in one place so things don't get lost and if Item no. 16 is pulled to a separate piece of paper it might be forgotten somewhere along the way so she suggested that it would be a good idea to leave Item no. 16 as is and have a reference to a separate disclosure so it doesn't get dropped from the list.

Chair Williams and the applicant agreed.

Commissioner Garcia needed clarification on the 64 sq. ft. of open space for the balconies. Mr. Murar explained that the larger units only have one balcony that totals 64 sq. ft.

Commissioner Garcia said he was concerned about the quality of life and felt that the 64 sq. ft. is still quite small. Mr. Williams explained that the balconies facing Montague Expressway have been eliminated because of noise reasons and the applicant is still retaining the architectural feature, however the balconies that are remaining still meet the minimum requirements.

Commissioner Garcia asked if the requirement is still 200 sq. ft. per unit and that is a combination of balconies and open space, the paseo and then now the applicant has to pay an impact fee. Mr. Williams explained that the applicant has to pay two fees, one is the population impact fee of 3 ½ acres per thousand that goes to the City Park and Recreation needs and an on-site square footage requirement for Recreation and open space which is 200 sq. ft. per unit of which 30% is allowed for attached private space and that is the minimum 60 sq. ft. balcony.

Chair Williams opened the public hearing.

There were no speakers from the audience.

#### **Close the Public Hearing**

**Motion** to close the public hearing.

M/S: Galang/Azevedo

AYES: 4

NOES: 0

Commissioner Garcia needed clarification on condition no. 30 that reads below:

*30.AFFORDABLE HOUSING. Prior to building permit issuance, the applicant shall provide proof of the provision of 31% of total units to be available at the very low-income affordability level, and 69% of the total units to be available at the moderate-income affordability level. (P)*

Mr. Williams said that there is an Owner Participation Agreement that will be going forward to Council in January and staff is recommending that Condition No. 30, No. 37 and finding No. 6 be removed from the recommendation and conditions of approval.

Commissioner Garcia needed clarification on special condition no. 4 that reads below:

*4. ENVIRONMENTAL. Prior to any permit issuance, the applicant shall submit documentation of the removal of all lead contamination and a "Notice of Completion" letter from the Department of Toxic Substance Control (DTSC) for the property at 1696 S. Main Street (APN 86-34-017). (P)*

Mr. Williams said the site has received all of its clearances and there is no liability.

Commissioner Garcia said that this was a complex project and applauds the team coming together and coming up with a good solution. He felt it was well done and will be a good gateway for City of Milpitas. .

Chair Williams echoed Commissioner Garcia's comments.

**Motion** to approve "S" Zone Approval No. SZ2005-3 and Use Permit No. UP2005-17 with suggestions to add general disclosures about possible noise and odor from Jack-in-the-Box, cross reference Item No. 16 (adjacent commercial development) in the general disclosures statement, and remove Conditions No. 30 and 37 and finding no. 6 and to include all of staff's recommendations and special conditions in the staff report.

M/S: Galang/Azevedo

AYES: 4

NOES: 0

**2. MAJOR TENTATIVE  
PARCEL MAP NO.  
MA2005-6**

**Cindy Hom, Junior Planner**, presented a request to subdivide an existing 44,892 square foot industrial building into twenty-four (24) condominium units for individual ownership, located at 995 Montague Expressway and recommended approval with conditions.

Commissioner Garcia referenced the letters he had in his packet from 991 Montague Expressway, Property Managers north of the project site, and letter from 995 Montague Expressway, asked if there were any other comments from other people involved. Ms. Hom noted there was correspondence from Dr. Nguyen, Lee Wieder and Dave Denton.

Commissioner Garcia said that it is apparent that parking is going to be a major problem in the area because there is a front to back access and two different parking zones. Ms. Hom explained that for professional office use, the required parking is being met, there will not be requirements for the applicant to secure additional parking so there will not be cross parking agreements with the church.

Mr. Williams added that 991 and 995 share some parking within the buildings, staff is concerned with the amount of parking, especially in light of 991 being approved for condo subdivision for medical /dental office use. So instead of going through a complex shared parking agreement, staff decided to put two special conditions in that actually limits the size of the occupancy based on the square footage using the amount of available parking that's allocated to 995 as the basis.

Commissioner Garcia asked how would staff monitor the requirement. Mr. Williams responded that the conditions would be enforced through the code enforcement division, planning and building.

Chair Williams asked if the traffic light signals of the complex are controlled by Caltrans and Mr. Williams said that the County controls the signals on Montague Expressway.

Mr. Williams suggested that staff could pursue the County to take a look at signal timing on Montague Expressway and Chair Williams agreed.

Chair Williams asked if chemicals will be used on the professional side of the dental office and staff said no.

Chair Williams opened the public hearing.

**Jim Fulton, Architect, representing the Owner of the project,** stated it is a good project and has opportunities for smaller business to come in and doesn't foresee any parking issues.

Commissioner Garcia asked Mr. Fulton if he foresees any traffic issues with regards to the large trucks. Mr. Fulton said that he couldn't speak for liability sake however he has not seen that much traffic and congestion in the area.

**Lee Wieder, Land Use Consultant representing Dr. Nguyen,** said they are concerned that city staff will not be able to monitor the allowable business uses and that the leasing of medical and dental space is being portrayed by the applicant as being readily available as professional office space that includes medical and dental offices as well.

He needed clarification that the consideration by the Commission is that the applicant will only be able to sell professional office space not medical/dental space. He also suggested that staff add language to special condition no. 5 that reads below:

5. *The amount of square footage that can be converted to medical and dental offices shall be limited to the number of existing parking stalls. Once the parking capacity is met, any remaining square footage shall remain vacant. This condition shall also be disclosed in the Conditions, Covenants, and Restrictions. (P)*

Mr. Fulton acknowledged that the applicant originally was marketing the building for condos for medical and dental offices, however after meeting with staff, it was changed. He said the marketing material was done about six months ago and is now being revised and will now be revised as condominiums for professional offices, however medical and dental offices are allowed.

Commissioner Garcia needed clarification. Ms. Hom said it is for professional offices however in the zoning code, it does permit medical and dental so by right they are allowed. Mr. Williams added that they are limited to the amount of parking that they currently have available so 30,000 square feet out of the 44,000 square feet is the maximum amount that they would be able to sell or occupy with medical/dental office.

Commissioner Garcia asked if the applicant is in agreement and Mr. Williams said yes.

Mr. Wieder said that he understood that there could be no selling of medical and dental and needed clarification. Mr. Williams said that is incorrect it goes to use not to ownership.

**Close the public hearing**

**Motion** to close the public hearing.

M/S: Garcia/Galang

AYES: 4

NOES: 0

Chair Williams said it is a complex project and has to look at the approval of permits and usage and make there are appropriate safeguards in place and looks upon staff due diligence. On behalf of Mr. Wieder, Chair Williams agreed to modify condition no. 5 and staff agreed.

**Motion** to approve Major Tentative Parcel Map No. MA2005-6 with modification to condition no. 5.

M/S: Galang/Garcia

AYES: 4

NOES: 0

The meeting was adjourned at 8:32 p.m. to the next regular meeting of January 11, 2006.

**X.  
ADJOURNMENT**

Respectfully Submitted,

Tom Williams  
Planning and Neighborhood Services  
Director

Veronica Bejines  
Recording Secretary